THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 14501 of 2006

Date: 27.07.2006

Between:

M/s.Harini Enterprises,
Jagannayakpur, Kakinada.

..... PETITIONER

AND

Government of Andhra Pradesh,
Rep. by its Secretary, Department of Revenue (Endowments),
Secretariat, Hyderabad and three others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 14501 of 2006

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ORDER:

The writ petition is filed aggrieved by the order of the first respondent, dated 02.06.2006, in proceedings bearing Memo No.21554/Endts.IV(2)/2006-1, directing respondents 3 and 4 to maintain *status quo* in respect of a Tea Stall in the third respondent-Devasthanam, which was earlier licenced to the petitioner.

The petitioner was granted permission to install and run an automatic coffee, tea and milk system on a round clock basis to serve the devotees visiting the temple, pursuant to the resolution of the Trust Board of the third respondent-Devasthanam. The resolution of the Trust Board was also approved by the fourth respondent, by proceedings dated 04.11.1998. It requires to be noticed that neither the resolution of the Trust Board nor the approval granted by the fourth respondent limits in point of time, the licence granted to the petitioner. It is rather surprising that the fourth respondent persuaded itself to be a party to a grant of licence in perpetuity as it were.

Be that as it may. As the third respondent-Devasthanam sought to evict the petitioner from the licenced premises, the petitioner filed O.S.No.17 of 1999 on the file of the Junior Civil Judge, Prattipadu seeking injunctive relief against the third respondent from interfering with its business. An interim injunction was granted. But on contest the suit was dismissed with a gratis observation by the Civil Court that the third respondent is entitled to take possession of the premises by invoking the provisions of Section 83 of the Andhra Pradesh Charitable and Hindu Religious Institutions & Endowments Act, 1987 (for short 'the Act'). According to the petitioner, the suit was dismissed by the Civil Court on 21.03.2006 and the third respondent evicted it forcibly on 22.03.2006.

Aggrieved thereby, the petitioner preferred a revision in

R.P.No.3 of 2006 before the fourth respondent under Section 92 of the Act. By order, dated 12.05.2006, the fourth respondent disposed of the revision petition declaring that the eviction of the petitioner was in transgression of the provisions of Section 83 of the Act; that the third respondent should continue the petitioner for pursuing the business as per the earlier approval granted by the fourth respondent's proceedings dated 04.11.1998, and that the third respondent is at liberty to take action for eviction of the petitioner in accordance with the procedure under the Act.

It is alleged that the second respondent, without any nexus or standing, preferred an application to the first respondent-Government assailing the revisional order of the fourth respondent dated 12.05.2006. On such an application, the impugned order came to be passed, which reads as under:

> "A copy of the Petition filed by Smt.Yenugupalli Subbalakshmi, W/o. Jayakar, Annavaram village, Sankavaram Mandal, East Godavari District is sent herewith to the Commissioner, Endowments Department, Hyderabad/the Executive Officer, Sri Veera Venkata Satyanarayana Swamy Devasthanam, Annavaram, East Godavari District. He is requested to furnish his remarks along with connected records, immediately to Government, for taking further action in the matter.
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> The Commissioner, Endowments Department, Hyderabad/the Executive Officer, Sri Veera Venkata Satyanarayana Swamy Devasthanam, Annavaram, East Godavari District is also requested to maintain Status-quo till the disposal of the petition at Government level."

As is apparent, the impugned order is not even marked to the petitioner, which is an affected party nor does the petitioner appear to have been arrayed as a respondent in the proceedings that have been initiated by the first respondent on the application of the second respondent.

At this hearing, the learned Government Pleader for Endowments states that the State has power under Section 93 of the Act, exercisable either *suo motu*, or on an application to examine the record of the fourth respondent or any other authority under the Act to satisfy itself as to the correctness, legality or propriety of such decision or order taken or passed, and if in any case, it appears to it that such decision or order should be modified, annulled, reversed or remitted for reconsideration, it may pass orders accordingly.

The learned Government Pleader for Endowments seeks to justify the impugned order on the authority consecrated on the first respondent under Section 93 of the Act. On text and authority, the jurisdiction of the State Government under Section 93 of the Act is quasi-judicial. In conformity with principles that govern quasi-judicial power it is required that the authority must provide opportunity and hear parties, whose rights are affected, before taking a decision. Section 93 of the Act does not consecrate any power on the first respondent to decide otherwise. The power under Section 93 of the Act is required to be exercised on sound principles of discretion and following established principles of procedural regularity.

The entire debate, if any, within the jurisdiction of the first respondent, is regarding the legitimacy of the petitioner's occupancy of a premises in the third respondent-Devasthanam. To such discourse, the petitioner is necessary and proper party. Any determination by the first respondent, without adequate and rational opportunity to the petitioner would constitute a reckless and vagrant exercise of power by the first respondent. The first respondent even on minimal standards of exercise of power under Section 93 of the Act ought to have communicated the impugned order of status quo, dated 02.06.2006 to the petitioner. In any event, the first respondent cannot finally adjudicate upon any petition filed by the second respondent assailing the order of the fourth respondent, dated 12.05.2006, without notice and opportunity to the petitioner. Any determination by the first

respondent, without opportunity and notice to the petitioner would be a vacuous exercise of power that will amount to nothing in law and will have no efficacy beyond the desk of the first respondent and shall not be enforceable by any authority.

In the light of the analysis and principles stated above, the first respondent is directed to consider and dispose of the second respondent's application assailing the fourth respondent's quasi-judicial determination in exercise of the fourth respondent's jurisdiction under Section 92 of the Act, viz., the fourth respondent's order dated 12.05.2006, expeditiously, and in any event, within a period of 30 days from the date of receipt of a copy of this order and after affording an opportunity to the petitioner. The first respondent shall also consider and record a decision as to whether the second respondent has *locus standi* to assail the fourth respondent's order dated 12.05.2006. The fourth respondent shall forthwith issue a notice providing opportunity to the petitioner to submit its explanation/defence to the proceedings initiated by the second respondent, within three days from the date of receipt of a copy of this order, duly enclosing a copy of the application of the second respondent, which triggered the exercise of jurisdiction by the first respondent. On receipt of such notice sent by the first respondent, by Registered Post with Acknowledgment Due, the petitioner shall submit its response within seven days from the date of receipt of such notice issued by the first respondent to it. The application of the second respondent along with objections to it by the petitioner shall be considered by the first respondent and a reasoned order shall be passed and communicated to the petitioner, within the period of

30 days stipulated in this order. In the meanwhile, it is open to the petitioner to submit an application for vacation of the impugned status quo order, and if such an application is filed, the first respondent shall dispose of the same, within a period of ten (10) days from the date of receipt of a copy of such application.

The writ petition is accordingly disposed of. No costs.

Goda Raghuram, J

Date: 27.07.2006
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